

1 Paul L. More, SBN 228589
2 F. Benjamin Kowalczyk, SBN 316796
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5 San Francisco, California 94105
6 Tel. No.: (415) 597-7200
7 Fax No.: (415) 597-7200
8 E-mail: pmore@msh.law

9 *Attorneys for Petitioner*

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 INTERNATIONAL
14 BROTHERHOOD OF
15 TEAMSTERS, LOCAL 396,

16 Petitioner,
17 vs.
18

19 NASA SERVICES, INC.; and DOES
20 I through X,

21 Respondents.
22
23

Case No.: 2:18-cv-03681-KS

24 **DECLARATION OF PAUL L.
25 MORE IN SUPPORT OF
26 MOTION TO COMPEL
27 ARBITRATION**

Date: August 20, 2018, 1:30 p.m.

Judge: Hon. Stephen Wilson

Location: Courtroom 10A
28

1 I, Paul L. More, declare as follows:

2 1. I am an attorney with the law firm McCracken, Stemerman &
3 Holsberry LLP and counsel of record for Petitioner Teamsters Local 396
4 (the "Union") in this matter. The factual statements contained in this
5 Declaration are made from personal knowledge. If called upon to do so, I
6 could and would testify competently to them.

7 2. In September 2014, NASA Services, Inc. approached the Union
8 about negotiating a labor peace agreement. Such an agreement was a
9 condition for responding to the City of Los Angeles's Request for Proposals
10 for commercial and multi-family residential waste hauling, and responses
11 to that RFP were due by October 29, 2014. The parties' representatives
12 agreed on a labor peace agreement (the "LPA") on October 24, 2014, and
13 the Union and NASA representatives signed the agreement on October 26
14 and October 27, 2014, respectively.

15 3. During the early phases of the negotiations between NASA and
16 the Union, NASA's consultant, Mario Beltran, acted as NASA's
17 representative, forwarding proposals to the Union. Later in the
18 negotiations, I communicated directly with NASA's attorney, Brent
19 Garrett, on the LPA.

20 4. When the parties negotiated and executed the LPA, NASA
21 requested—and on my advice, the Union provided—a signed "Form 15"
22 attesting that NASA and the Union were parties to a labor peace
23 agreement meeting the requirements of the RFP and Los Angeles
24 Municipal Code § 66.33.6(c), the provision of the City's franchise ordinance
25 that required a labor peace agreement. On information and belief, NASA
26 relied on the executed LPA and the executed Form 15 in responding to the
27 exclusive-franchise RFP and, ultimately, in obtaining a lucrative exclusive
28 waste-hauling franchise from the City. A true and correct copy of the

1 “Form 15” executed by the Union’s Secretary-Treasurer and NASA’s
2 President is attached hereto as Exhibit 1.

3 5. After the execution of the LPA, Mr. Garrett and I conferred,
4 pursuant to Paragraph 14, over the identity of the arbitrator to hear
5 disputes under the LPA. Because those negotiations took more than the 30
6 days prescribed in Paragraph 14, I sought, and Mr. Garrett granted
7 extensions on the deadline to choose arbitrators. A true and correct copy of
8 our email correspondence extending the deadlines for selecting an
9 arbitrator is attached to this Declaration as Exhibit 2.

10 6. The parties ultimately reached agreement on Arbitrator Michael
11 Rappaport as the permanent arbitrator under the LPA. The parties
12 memorialized this agreement in an executed “Addendum to Memorandum
13 of Agreement.” A true and correct copy of that Addendum is attached
14 hereto as Exhibit 3.

15 7. On November 28, 2017—after months of delay from NASA—I
16 informed Arbitrator Rappaport that the Union and NASA had a dispute
17 under the LPA. Attached to this Declaration as Exhibit 4 is a true and
18 correct copy of my email correspondence to Arbitrator Rappaport.

19 8. On December 8, 2017, NASA’s counsel wrote to Arbitrator
20 Rappaport, declining to arbitrate and stating that “NASA and Local 396
21 are not parties to any agreement.” A true and correct copy of that email
22 correspondence is attached to this Declaration as Exhibit 5.

23 9. On February 2, 2018, I wrote to NASA’s counsel again, citing
24 *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 446 (2006) and
25 asking NASA to reconsider its refusal to arbitrate the dispute. A true and
26 correct copy of that letter is attached to this Declaration as Exhibit 6.

1 I declare under penalty of perjury under the laws of the United States
2 that the foregoing is true and correct. Executed this 23rd day of July, 2018
3 in San Francisco, California.

4 /s/Paul L. More
5 PAUL L. MORE
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PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed in the city and county of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action; my business address is: 595 Market Street, Suite 800, San Francisco, California 94105.

On July 23, 2018 I served a copy of the following document(s) described as:

DECLARATION OF PAUL L. MORE IN SUPPORT OF MOTION TO COMPEL ARBITRATION

on the interested party(ies) to this action as follows:

By ECF System - Court's Notice of Electronic Filing:

L Brent Garrett
Atkinson Andelson Loya Ruud and Romo
12800 Center Court Drive South Suite 300
Cerritos, CA 90703
562-653-3200
Fax: 562-653-3333
Email: bgarrett@aalrr.com

Attorneys for NASA Services, Inc.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 23rd day of July 2018, at San Francisco, California.



Katherine Maddux

EXHIBIT 1

FORM 15

Evidence of Signed Labor Peace Agreement

NASA Services, Inc. (the "Company") has complied with Article 2.4.5.1 of the RFP and Section 66.33.6(c) of the Los Angeles Municipal Code, which required CONTRACTOR, and any subcontractor who will provide collection services under the franchise agreement, to enter into labor peace agreement(s) that contain provisions under which the labor organization for itself and its members agrees to refrain from engaging in any picketing, work stoppage, or any other economic interference with the CONTRACTOR'S or subcontractor's performance of collection services under the terms of the CONTRACT. The Company is party to an agreement with Teamsters Local Union No. 396 that meets the definition of a Labor Peace Agreement.


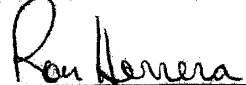
<p>FOR THE COMPANY:</p> <p>NASA SERVICES, INC.</p> <p>Arsen Sarkisian, President</p> <p></p> <p>Date: <u>10/27/14</u></p>	<p>FOR THE UNION:</p> <p>TEAMSTERS LOCAL UNION NO. 396</p> <p>Ron Herrera, Secretary-Treasurer</p> <p></p> <p>Date: <u>10.26.14</u></p>
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EXHIBIT 2

Paul More

From: Garrett, Brent <bgarrett@laborlawyers.com>
Sent: Wednesday, January 28, 2015 8:46 AM
To: Paul More
Cc: Weber, Jackie
Subject: RE: NASA Services/Teamsters MOA

Paul,

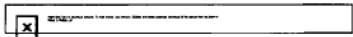
We agree to a 30 day extension. Rappaport may be acceptable. Let me confirm with NASA and I will report back.

Regards, Brent

Brent Garrett

Attorney at Law

bgarrett@laborlawyers.com | O: (949) 798-2137
2050 Main Street | Suite 1000 | Irvine, CA 92614



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From: Paul More [mailto:pmore@dcbsf.com]
Sent: Monday, January 26, 2015 6:27 PM
To: Garrett, Brent
Cc: Weber, Jackie
Subject: RE: NASA Services/Teamsters MOA

Brent,

Please let me know whether Rappaport is acceptable. Please confirm that the Employer agrees to a further 30 days to decide on a mutually acceptable arbitrator.

Paul

Paul L. More
Davis, Cowell & Bowe, LLP
595 Market Street, Suite 1400
San Francisco, CA 94105

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www.dcbllabor.com

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From: Garrett, Brent [<mailto:bgarrett@laborlawyers.com>]
Sent: Friday, December 19, 2014 5:19 PM
To: Paul More
Cc: Weber, Jackie
Subject: RE: NASA Services/Teamsters MOA

Paul,

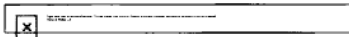
Thanks for your email. The Employer agrees to another 30 day extension to discuss a mutually acceptable arbitrator. I will let you know on Rappaport.

Thank you,
-Brent

Brent Garrett

Attorney at Law

bgarrett@laborlawyers.com | O: (949) 798-2137
2050 Main Street | Suite 1000 | Irvine, CA 92614



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From: Paul More [<mailto:pmore@dcbsf.com>]
Sent: Friday, December 19, 2014 5:16 PM
To: Garrett, Brent
Subject: RE: NASA Services/Teamsters MOA

Brent,

We are again close to the deadline to select an arbitrator before the deadline to move the matter to FMCS kicks in. We have proposed Rappaport. We are amenable to extending the date to mutually select an arbitrator by another 30 days. If you agree to Rappaport, or if you agree to extend the deadline for another 30 days, to January 25, please let me know by Monday. Otherwise, I'll ask FMCS to send us a panel consistent with the MOA.

Thank you.

Paul More

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From: Paul More
Sent: Tuesday, December 16, 2014 3:01 PM
To: 'Garrett, Brent'
Subject: RE: NASA Services/Teamsters MOA

Brent,

We propose Michael Rappaport.

Let me know if he is acceptable.

Thanks.

Paul

Paul L. More
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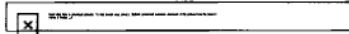
From: Garrett, Brent [mailto:bgarrett@laborlawyers.com]
Sent: Thursday, November 20, 2014 10:32 AM
To: Paul More
Subject: RE: NASA Services

Agreed.

Brent Garrett

Attorney at Law

bgarrett@laborlawyers.com | O: (949) 798-2137
2050 Main Street | Suite 1000 | Irvine, CA 92614



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From: Paul More [mailto:pmore@dcbsf.com]
Sent: Thursday, November 20, 2014 10:23 AM
To: Garrett, Brent
Subject: RE: NASA Services

I'll take those back to the Union. In the meantime, can we stipulate to an additional 30 days to jointly decide on an arbitrator before the obligation to invoke FMCS kicks in? That would make the deadline December 26.

Paul

Paul L. More
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have received this communication in error, please contact us immediately at 415 597-7200.

From: Garrett, Brent [mailto:bgarrett@laborlawyers.com]
Sent: Thursday, November 20, 2014 10:17 AM
To: Paul More
Subject: NASA Services

Paul, We appreciate the suggestion of Terri Tucker; however, we cannot agree to use her. How about one of these arbitrators: Lou Zigman, Ken Perea, or John Perone? Thanks, Brent

Brent Garrett

Attorney at Law

bgarrett@laborlawyers.com | O: (949) 798-2137
2050 Main Street | Suite 1000 | Irvine, CA 92614



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EXHIBIT 3

ADDENDUM TO MEMORANDUM OF MEMORANDUM OF AGREEMENT

WHEREAS NASA Services, Inc. (hereinafter the "Employer") and Teamsters Local 396 (hereinafter the "Union") entered into a Memorandum of Agreement (hereinafter the "Agreement") on October 24, 2014; and

WHEREAS, Paragraph 14 of the Agreement provides for expedited and binding arbitration of disputes arising over the interpretation or application of the Agreement; and

WHEREAS, on February 10, 2015, the Employer and the Union agreed to Michael Rappaport as the permanent arbitrator under the Agreement;

NOW, THEREFORE,

The parties ratify their prior agreement that Michael Rappaport shall be the permanent arbitrator under Paragraph 14 of the Agreement. Should Michael Rappaport become unavailable to serve in this capacity, the parties shall follow the procedures set forth in Paragraph 14 to select another permanent arbitrator.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands.

NASA SERVICES, INC.

TEAMSTERS LOCAL 396

By: [Signature]

By: [Signature]

Its: President

Its: Sec. Treas.

Date: 4/1/15

Date: 4.20.15

EXHIBIT 4

Paul More

From: Paul More
Sent: Tuesday, November 28, 2017 3:25 PM
To: mrappaport@aol.com
Cc: mario@principiagrouppllc.com; jack@nasaservices.com
Subject: Teamsters Local 396 and NASA Services, Card-Check Agreement Arbitration [IWOV-Legal.FID260864]
Attachments: NASA Services signed Labor Peace Agreement.PDF; NASA LPA Amendment.PDF

Arbitrator Rappaport,

You are the named arbitrator on a card-check neutrality agreement between Teamsters Local 396 and NASA Services. Teamsters Local 396 has invoked the agreement's arbitration clause. Because the agreement sets forth the parties' mutual obligations during an organizing drive and is of a limited duration, the Local hopes to fine an early arbitration hearing date to resolve the dispute.

Please provide us with your earliest available date to hear this dispute.

Thank you.

Paul More

Paul L. More
McCracken, Stemerman & Holsberry LLP
595 Market Street, Suite 800
San Francisco, CA 94105
Tel.: 415-597-7200
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EXHIBIT 5

Paul More

From: Brent Garrett <BGarrett@aalrr.com>
Sent: Friday, December 08, 2017 1:15 PM
To: Paul More; mrappaport@aol.com
Cc: Jim Smith
Subject: RE: Teamsters Local 396 and NASA Services, Card-Check Agreement Arbitration [IWOV-Legal.FID260864] [AALRR-Cerritos.015350.00001]

Greetings Mr. Arbitrator,

I am legal counsel for NASA.

There is no agreement to arbitrate. Nor is there is an underlying Card-Check Agreement between NASA and Local 396. NASA and Local 396 are not parties to any agreement.

Regards,
Brent Garrett

Brent Garrett | Partner
Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300, Cerritos, California 90703
Direct (562) 653-3575 • Main (562) 653-3200 • Fax (562) 653-3333
bgarrett@aalrr.com | [website](#) | [subscribe](#)

From: Paul More [mailto:pmore@msh.law]
Sent: Friday, December 08, 2017 1:06 PM
To: mrappaport@aol.com
Cc: Jim Smith; Brent Garrett
Subject: RE: Teamsters Local 396 and NASA Services, Card-Check Agreement Arbitration [IWOV-Legal.FID260864]

Arbitrator Rappaport,

Please provide us with your earliest available dates to hear this matter.

Thank you.

Paul L. More
McCracken, Stemerman & Holsberry LLP
595 Market Street, Suite 800
San Francisco, CA 94105
Tel.: 415-597-7200
Fax: 415-597-7201

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From: Paul More
Sent: Friday, December 01, 2017 1:53 PM
To: 'mrappaport@aol.com' <mrappaport@aol.com>
Cc: mario@principiagroupplc.com; jack@nasaservices.com; 'Jim Smith' <jimsmith@local396.net>
Subject: RE: Teamsters Local 396 and NASA Services, Card-Check Agreement Arbitration [IWOV-Legal.FID260831]

Arbitrator Rappaport,

Thank you for your response. This is not a request for a card-count. Rather, the parties have agreed contractually to use you as an arbitrator on disputes over the meaning or application of the memorandum of agreement.

The parties' agreement provides the Union with certain organizing rights—including rights to access, employee-contact information, and a card-count method of recognition—in return for the Union's promise not to strike, picket, or take other economic action against NASA. Among other organizing rights, the agreement requires that NASA provide the Union with lists of bargaining-unit employees upon receiving notice from the Union that it intends to organize. NASA has refused to provide such lists (or to otherwise comply with the agreement), which defeats the purpose of the agreement for the Union. There is urgency to the matter, given that the Union is in the process of organizing NASA's workers and the parties' agreement has a limited duration.

Please provide us with your earliest available dates for a one-day arbitration over this matter.

Thank you.

Paul L. More
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From: mrappaport@aol.com [mailto:mrappaport@aol.com]
Sent: Thursday, November 30, 2017 4:57 PM

To: Paul More <pmore@msh.law>

Cc: mario@principiagrouppllc.com; jack@nasaservices.com

Subject: Re: Teamsters Local 396 and NASA Services, Card-Check Agreement Arbitration [IWOV-Legal.FID260864]

Thank you for your email. It is not clear to me however what the parties are asking me to do. Am I being asked to engage in a card check counting procedure or am I being asked to conduct an expedited arbitration hearing? I could possibly squeeze in a card check procedure within the next two months but I can't agree to schedule any new cases within that period even if its an expedited case. Also in what city will this take place since that could also be an issue?

-----Original Message-----

From: Paul More <pmore@msh.law>

To: mrappaport <mrappaport@aol.com>

Cc: mario <mario@principiagrouppllc.com>; jack <jack@nasaservices.com>

Sent: Tue, Nov 28, 2017 3:24 pm

Subject: Teamsters Local 396 and NASA Services, Card-Check Agreement Arbitration [IWOV-Legal.FID260864]

Arbitrator Rappaport,

You are the named arbitrator on a card-check neutrality agreement between Teamsters Local 396 and NASA Services. Teamsters Local 396 has invoked the agreement's arbitration clause. Because the agreement sets forth the parties' mutual obligations during an organizing drive and is of a limited duration, the Local hopes to fine an early arbitration hearing date to resolve the dispute.

Please provide us with your earliest available date to hear this dispute.

Thank you.

Paul More

Paul L. More
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EXHIBIT 6

McCRACKEN, STEMERMAN & HOLSBERRY, LLP

Counselors and Attorneys at Law

February 2, 2018

San Francisco

595 Market Street, Suite 800
San Francisco, California 94105
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Fax 415.597.7201

Steven L. Stemerman (CA, NV)
Richard G. McCracken (CA, NV)
W. David Holsberry (CA, NV)
John J. Davis, Jr. (CA)
Florence E. Culp (CA, NV)
Kristin L. Martin (CA, NV, HI)
Eric B. Myers (CA, NV)
Paul L. More (CA, NV, MA)
Sarah Varela (CA, AZ, NV)
Sarah Grossman-Swenson (CA, NV)
Yuval Miller (CA, NV)
David L. Barber (CA, NV)
Kimberley C. Weber (CA, NV)
A. Mirella Nieto (CA)
F. Benjamin Kowalczyk (CA)

Robert P. Cowell (1931-1980)

Philip Paul Bowe (CA) (Ret.)
Barry S. Jellison (CA) (Ret.)

Las Vegas

1630 S. Commerce Street, Suite A-1
Las Vegas, Nevada 89102
702.386.5107
Fax 702.386.9848

Via U.S. Mail

Brent Garrett
Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300
Cerritos, California 90703

Dear Brent,

Teamsters Local 396 has carefully considered your position that the October 27, 2014 labor peace agreement between the Union and NASA Services, Inc. (the “LPA”) is no longer in effect and find your position to be untenable. We will therefore proceed forward with arbitration over NASA’s failure to comply with its obligations under the agreement.

As you are no doubt aware, the question of whether the parties’ LPA remains in effect is one for the arbitrator. There is no dispute that the parties entered into the LPA. The LPA contains a broad arbitration clause, covering “any disputes over the interpretation or application of this Agreement.” The parties’ apparent dispute about whether the agreement became null and void pursuant to the final sentence of Paragraph 15 is a matter for the arbitrator to resolve.

Section 301 of the Labor Management Relations Act governs agreements like the LPA. *See, e.g., Service Employees Int’l Union v. St. Vincent Medical Ctr.*, 344 F.3d 977, 979 (9th Cir. 2003); *Hotel Employees & Restaurant Employees Local 2 v. Marriott Corp.*, 961 F.2d 1464, 1466 (9th Cir. 1992); *see also United Steel, Paper, etc. v. TriMas Corp.*, 531 F.3d 531, 533 (7th Cir. 2008); *Hotel & Restaurant Employees Union Local 217 v. J.P. Morgan Hotel*, 996 F.2d 561, 564-65 (2d Cir. 1993). Relying on the common law principles developed under § 301, federal courts have ordered arbitration of disputes arising out of those agreements. *TriMas Corp.*, 531 F.3d at 533; *St. Vincent Medical Center*, 344 F.3d at 985-86; *J.P. Morgan Hotel*, 996 F.2d at 568.

Under § 301, “a broad arbitration clause – even one that does not specifically mention *who* decides arbitrability – is sufficient to grant the arbitrator authority to decide his or her own jurisdiction.” *Local 1780 v. Desert Palace*, 94 F.3d 1308, 1310 (9th Cir. 1996) (emphasis in the original). The fact that NASA argues that the Agreement became null and void on January 1, 2017 does not allow it to avoid arbitration. Under *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S.



McCRACKEN, STEMERMAN & HOLSBERRY, LLP

Brent Garrett
February 2, 2018
Page 2 of 2

440, 446 (2006), “[u]nless the challenge is to the arbitration clause itself, the issue of the contract’s validity is considered by the arbitrator in the first instance.”

You have previously refused to take part in an arbitration over NASA’s failure to comply with the LPA. Please inform us by Wednesday, February 7 whether NASA maintains this position. If so, we will proceed to court for an order compelling arbitration and for the Union’s attorneys’ fees pursuant to paragraph 14 of the LPA.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul L. More".

Paul L. More